IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.36 of 2006

Decided on : October 22, 2007

Manohar Lal **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : None.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Appellant is aggrieved by the judgment of the Sessions Court whereby he has been convicted of an offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default of payment of fine to undergo simple imprisonment for a further period of one year.

2. As per the prosecution, appellant committed rape on a minor girl (aged about 14 years) on 26th June, 2004. The girl was mentally retarded to the extent of 75 per cent. The incident took place when the girl had gone alongwith her siblings to attend marriage of her *Chacha* (father's brother). The appellant allegedly took her from the site of the marriage to the fields where he committed rape on her. The prosecutrix spent the night at her *Chacha's* place and the next morning she went to her own house. On 29th June, 2004, two nephews of the

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Whether reporters of the local papers may be allowed to see the judgment?

mother of the prosecutrix informed her (the mother of the prosecutrix) about the incident. The mother of the prosecutrix then confronted the prosecutrix with what she was told by her two nephews, named Rinku and Bindu. The prosecutrix then told her mother that she had been raped by the appellant on the night she had been to her *Chacha's* place in connection with his marriage.

3. Nobody appears for the appellant. We have gone through the record carefully. We find that even though the allegation of rape is there and the prosecutrix testified that she had been raped, yet the medico legal evidence in the form of the testimony of PW-1 Dr. (Mrs.) Kamlesh Dogra, who conducted the medical examination of the prosecutrix, and the report of the Chemical Examiner, Ex. PW-10/A, make the prosecution story highly doubtful, bordering on falsehood. PW-1 Dr. Kamlesh Dogra has categorically stated that she did not find any sign of rape, when she conducted the medical examination of the prosecutrix. She has stated that the hymen of the prosecutrix was intact and vagina was one finger tight. She prepared slide of the swab of the prosecutrix, which was sent to the Chemical Examiner. The Chemical Examiner, per report Ex. PW-10/A, did not find semen in the swab. Clothes of the prosecutrix were also sent to the Chemical Examiner and on her clothes also no stains of semen were found. PW-1 Dr. Kamlesh Dogra, on seeing the report of the Chemical Examiner, gave definite opinion that the prosecutrix had not been raped. No injury whatsoever was found on the person of the prosecutrix by PW-1 Dr. Kamlesh Dogra suggestive of even an attempt to rape her or to outrage her modesty.

4. The above stated position when seen in the light of the fact that the matter was reported to the Police on 29th June, 2004 or

say three days after the alleged occurrence, makes the prosecution version all the more doubtful.

5. For the foregoing reasons, the appeal is allowed. Judgment of the trial Court convicting and sentencing the appellant of the offence punishable under Section 376 IPC is set aside. The appellant is stated to be in jail, serving out the sentence awarded by the trial Court. He be set at liberty forthwith, in case his detention is not required in any other case.

6. Appeal stands disposed of.

(Surjit Singh), J

October 22, 2007(sd) **(Surinder Singh), J**